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EXAMINER

MENON, KRISHNAN S

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/045,301
Filing Date: October 26, 2001
Appellant(s): BOSKO, ROBERT S.

MAILED

AUG 03 2006

GROUP 1700

Dennis Braswell
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 2/22/05 and correction of appeal brief filed 1/9/06 appealing from the Office action mailed 9/16/04.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6093312	BOULTER	7-2000
5,256,279	VOZNICK et al	10-1993
5,992,685	CREDLE Jr	11-1999

5,536,411

BLADES

7-1996

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 112

1. Claims 1,6-8,11-15 and 18-31 rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement.

The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claims 1,20 and 31, as amended, recite the treated water source as sharing at least a part of a cabinet to have the treated water source integral with the water-using unit. However, sufficient disclosure could not be found in the specification or claims as originally filed to support this limitation in the amended claim. While having a *shared cabinet* may be construed as being disclosed by the lines 8-11 of page 6 of the specification, these lines do not provide the disclosure to support the claim limitation that the cabinet would make the water source and water-using unit integral. There is no structure provided anywhere to show how the cabinet would make the units integral.

Claim 20, as amended, also has the limitation 'said separate unit does not share said cabinet'. This negative limitation is not supported by the disclosure in the

specification and claims as originally filed. While lines 8-11 in page 5 may support sharing a cabinet, these lines do not provide disclosure for separate cabinets, especially the limitation "does not share a cabinet".

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 20-25, 27 and 31 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by, or in the alternative, under 35 USC 103(a) as being obvious over Boulter (US 6,093,312).

Claim 20: Boulter (312) teaches a water-using unit (16 – fig 6) having a cabinet (fig 17-19), treated water source (8-fig 6), a host system (fig 24,26), control system (fig 24,26), and a separate remote unit coupled to the unit (ice-maker 2028, fig 24, and cooler system 2030-2033, fig 19). With regard to the user access areas and their being not presented as combined, a user access area would be inherent for any dispenser unit; any dispenser unit must logically have access (area) for someone to use it; and if dispenser units are located remote to one another, so would the corresponding user access areas be. The express, implicit, and inherent disclosures of a prior art reference may be relied upon in the rejection of claims under 35 U.S.C. 102 or 103. "The inherent teaching of a prior art reference, a question of fact, arises both in the context of

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anticipation and obviousness.” *In re Napier*, 55 F.3d 610, 613, 34 USPQ2d 1782, 1784 (Fed. Cir. 1995) (affirmed a 35 U.S.C. 103 rejection based in part on inherent disclosure in one of the references). See also *In re Grasselli*, 713 F.2d 731, 739, 218 USPQ 769, 775 (Fed. Cir. 1983). With regard to “... the water source sharing at least part of the cabinet such that said treated water source is integral ...”, the applicant has not shown any specific structure to show the water source as being integral with the water using unit that is different from that of the reference. (Making integral is not patentable: “...the use of a one piece construction instead of the structure disclosed in [the prior art] would be merely a matter of obvious engineering choice” (*In re Larson*, 340 F.2d 965, 968, 144 USPQ 347, 349 (CCPA 1965)),. Moreover, there is no specific structure shown in the applicants’ disclosure and drawings to differentiate the limitation the water source being integral with the water using unit, with that of the reference.). Re the remote system not sharing a cabinet, see fig 14, 17, 18 and 19 – a remote dispenser has a separate cabinet.

Boulter (312) teaches RO system and reservoir as in instant claims 21-23 (10, 2301, 8 – fig 24; col 6 lines 21-35), icemaker as in claim 25 (2300-fig 23).

Re claim 24: Boulter (312) teaches a water-using unit (fig 23), treated water source (2300), a host system (fig 24,26), control system (fig 24,26), and a separate remote unit coupled to the unit (water dispenser – ozonator 16,17-fig 7) as in instant claim 20, with treated water source comprising a reservoir (2300) as in claim 23 and further comprising a cooling source (2019) and said reservoir in cooling proximity to said cooling source (see fig 32) as in claim 24.

Re claim 27: Boulter (312) teaches a water-using unit (fig 23), treated water source (2300), a host system (fig 24,26), control system (fig 24,26), and a separate remote unit coupled to the unit (water dispenser – ozonator 16,17-fig 7) as in instant claim 20, host system comprises an ice-maker as in claim 25 (2019), and the treated water source is a reservoir (2300), ice maker has a cooling source, and the reservoir is in cooling proximity to the cooling source (see fig 32) as in claim 27.

Re claim 31, Boulter teaches a water-using unit (ice-maker 2028: fig 24); a water source integral with the unit (RO system 8-10; inside the kiosk: col 6 lines 62-63); a reservoir with the source (2301); a host system performing functions coupled to the source (see figures); a control system (see fig); a cooling source located in cooling proximity to the reservoir (see fig 32 – ice maker is a cooling source in cooling proximity to the reservoir 2301). With regard to ‘conductive cooling’, the reservoir 2301 is proximate to the ice maker 2019, and therefore, inherently would have conductive cooling, as in the applicant’s invention disclosed in page 9 lines 15-20 (In re Napier, etc. as above). Re the cabinet and the water source being integral with the water-using unit, see claim 20 above.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1,8, 12, 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Boulter (US 6,093,312) in view of Voznick et al (US 5,256,279).

Boulter (312) teaches a water-using unit (fig 23) comprising a cabinet (Fig 17-19), treated water source (2300), a host system (fig 24,26), control system (fig 24,26), a separate remote unit coupled to the unit (water dispenser – ozonator 16,17-fig 7) and a cooling source located in cooling proximity to the reservoir (see fig 32 – ice maker is a cooling source in cooling proximity to the reservoir 2301) as in instant claim 1. The reservoir 2301 is proximate to the ice maker 2019, and therefore, inherently would have cooling proximity, as in the applicant's invention disclosed in page 9 lines 15-20 (*In re Napier*, etc. as above). Re the water source sharing the cabinet and being integral with the water using unit, the cabinet is being shared – see figures; being integral is not patentable: "...the use of a one piece construction instead of the structure disclosed in [the prior art] would be merely a matter of obvious engineering choice" (*In re Larson*, 340 F.2d 965, 968, 144 USPQ 347, 349 (CCPA 1965)). Moreover, there is no specific structure shown in the applicants' disclosure and drawings to differentiate the limitation the water source being integral with the water-using unit, with that of the reference.

Boulter does not teach a flexible reservoir for 2300 as in claim 1. Voznick teaches a reservoir having a bladder in which the reverse osmosis water is inside the bladder (fig 4,5; col 6 lines 19-34). It would be obvious to one of ordinary skill in the art at the time of invention to use the teaching of Voznick in the teaching of Boulter to have the Reverse Osmosis-treated water inside the bladder for controlling the water stored in

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the bladder as taught by Voznick without having significant backpressure and prevent air-borne bacteria, etc. (see Voznick col 1 line 60 – col 2 line 17, and col. 3).

The cooling source comprises ice as in claim 12. Water not frozen in the icemaker is returned to the reservoir as in claim 14 (see fig 32).

Re claim 13, Boulter in view of Voznick does not specifically state a pulsating flow to the icemaker. However, Boulter (312) teaches a pump, Hoshizaki Model KM1600S (col 6 lines 66-67), which could pulse the water to the icemaker. It would be obvious to one of ordinary skill in the art at the time of invention to have pulsating flow to the icemaker due to such a pump as taught by Boulter (312).

4. Claims 26 and 28-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Boulter (312) in view of Credle Jr. (US 5,992,685).

Boulter (312) teaches all the limitations of claim 20. Claims 26 and 28-30 add further limitations as follows: beverage dispenser as in instant claims 26 and 28. Credle (685) teaches a water-using unit with a beverage dispenser as in instant claims 26 and 28 (see figures and abstract). It would be obvious to one of ordinary skill in the art at the time of invention to have the Boulter R/O system coupled/connected to the beverage dispenser of Credle (685) to have a filtered fluid before dispensing as taught by Credle. (figure 2, R/O before dispensing)

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5. Claims 15 and 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Boulter (312) in view of Voznick (279) as in claim 1 above, and further in view of Credle (685).

Instant claims add further limitations, which Boulter in view of Voznick does not teach but taught by Credle as follows: Credle (685) teaches a water-using unit with host system (see fig 1 and 12), the system comprises a beverage dispenser including a cooling source (abstract), as in instant claim 15; the system includes carbonator, supply of syrups and flavors as in instant claim 18 and 19 (abstract, fig 5-8). It would be obvious to one of ordinary skill in the art at the time of invention to use the teaching of Credle in the teaching of Boulter in view of Voznick to have a beverage dispenser as taught by Credle as an added feature to the water dispenser and to have the Boulter R/O system coupled/connected to the beverage dispenser of Credle (685) to have a filtered fluid before dispensing as taught by Credle. (figure 2, R/O before dispensing).

6. Claims 6,7,11 and 12 are rejected under 35 U.S.C. 103(a) as unpatentable over Boulter in view of Voznick as in claim 1 above and further in view of Blades (US 5,536,411).

Instant claims add further limitations not taught by Boulter in view of Voznick, but taught by Blades (411) as follows: condenser with the host system using RO reject water as in claim 6, inlet water as in instant claim 7 and cooling source comprising ice as in claim 12 (abstract, col 5 lines 45-67), the cooling source has an evaporator as in instant claim 11 (fig 4, col 5 lines 49-55). It would be obvious to one of ordinary skill in

the art at the time of invention to use the teachings of Blades in the teaching of Boulter in view of Voznick for energy recovery as taught by Blades in the 'Boulter in view of Voznick' system.

(10) Response to Argument

1. The 112, first paragraph rejections

In response to the appellant's arguments that the disclosure for the cabinet can be found in the quoted lines of page 6 of the specification (lines 8-12): This is the only reference to 'cabinet' in the entire specification and claims as originally filed. With the amendment of 8/23/04, Appellant is leaning on 'cabinet' for patentability over the prior arts, especially, the cabinet making the water source and the water using unit integral. The examiner could not find any support for this limitation anywhere in the specification and claims as originally filed.

With regard to claim 20, there is the added limitation that the 'separate unit does not share said cabinet', which also has no support in the disclosure.

While logic and common-sense tell that units in proximity could be housed in a single cabinet, and remote units require separate cabinets (as argued by the appellant), there has to be sufficient disclosure in the specification to support the claim limitation for patentability over the prior arts. The limitation, 'a treated water source sharing at least part of said cabinet **such that** said treated water source is integral with the water-using unit ...' requires that the cabinet somehow make the treated water source integral with the water-using unit. Where is supporting disclosure for this element?

2. Rejections of claims 20-25, 27 and 31:

These claims were rejected under 102(b)/103(a) by the Boulter ref. The alternate 103 rejection is because of the inherency doctrine.

Appellant's arguments on patentability over the Boulter reference is over the limitation of the water source sharing the cabinet with the water using unit such that they are integral. Boulter ref teaches a water-source-water dispensing system built in a kiosk as seen in the figures. The kiosk can be a cabinet; it has the water source and the water-using unit (water dispenser), which meet the limitation of the claims. Also, Appellant has no disclosure in the specification or drawings to show any specific structure for the cabinet that makes the units integral, as claimed, for one of ordinary skill in the art to read the claims in the light of the disclosure in the specification to see the differences between the claimed invention and the teaching of the prior art.

With regard to claim 20, the additional limitation, the kiosk is depicted as having separate compartments. For example, figure 19 shows the kiosk with the ice-dispenser in cut-away section, and figure 28 shows the icemaker with separate cabinet 2019 and the ice bin (another separate cabinet) 2028 which feeds ice to the ice dispenser (see col 7 line 60 –67), with the units 2030-2033 located on the roof of the kiosk (col 6 lines 21-35 and fig 19). The units 2030-2033 are compressor, receiver tanks for the air-cooler for the icemaker, which are all part of the ice-dispenser system (a water-using unit). As can be seen, these compressors and receiver tanks are separate from the kiosk (being on its roof for space-saving and maintenance), which meet the 'does not share said cabinet' limitation of claim 20.

Thus, the reference does teach the claim limitations argued, while the appellant has no disclosure for them.

Even if these teachings are considered insufficient for the argued limitations to warrant a 102(b) rejection, providing a common cabinet or separate cabinets would be obvious for reasons such as weather-protection or keeping a commercial unit under lock and key. Making integral (one piece) or separable (two-part) would be a matter of obvious engineering choice (*In re Larson*, 340 F.2d 965, 968, 144 USPQ 347, 349 CCPA 1965); *In re Dulberg*, 289 F.2d 522,523, 129 USPQ 348,349 (CCPA 1961)).

Regarding claims 24,27 and 31: The argument is that what Boulter teaches is not sufficient to overcome the appellant's claim limitation of "cooling proximity". Heat-transfer can happen by conduction, convection or radiation. There is hardly any structure in the appellant's claims that is sufficiently different from that of the reference to warrant the 'radiation' cooling. Similarly, there is no conductive cooling either, because conduction requires physical contact, which is not recited in the claims or disclosed in the specification. That leaves the convection cooling. The reference has the tank 2300 in close proximity to the icemaker (they are close to each-other, and also in the same kiosk), and the lines 3203 and 3205 circulating the ice harvest overflow water provide the teaching for the 'cooling proximity' limitation. The reference also would provide conductive cooling because the tank and the ice harvester are linked physically by the pipes 2303 and 2305. See col 8 lines 26-44 and figure 32.

In response to the arguments under subsection 2.2 of the brief that a prima facie case of Obviousness has not been made: Even at a remote possibility that the teaching

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of the Boulter reference is insufficient to anticipate integrating the units in a cabinet, it would be obvious to one of ordinary skill in the art at the time of invention to use cabinets to keep the commercial units under lock and key for security purposes, or protect from weather. It would also be obvious to one of ordinary skill in the art at the time of invention that making integral or separable would be an engineering choice as taught by the cited case laws in re Larson and in re Dulberg. With respect to the cooling proximity limitation, even if the reference does not specifically state that they are in cooling proximity, it would be inherent, since they are physically near, and have physical contact, and have the water being circulated through the reservoir (tank 2300) from the ice-maker. Appellant has not defined 'cooling proximity' in any sufficient detail that would show a significant structural difference from the teaching of the reference.

3. Claims 1,8 and 12-14:

These claims were rejected under 103(a), Boulter in view of Voznick. Boulter teaches the purified water in the reservoir, outside the bladder, where as the claim recites the purified water inside the bladder.

Re the hindsight reasoning, and lack of motivation to combine arguments: The motivation to combine is stated in the rejection, with reference to specific paragraphs of the reference. As can be seen, the Voznick reference teaches certain advantages to having a flexible reservoir such as filling without any back-pressure (col 2 lines 18-29), sealed reservoir to prevent air-borne particles and microbial growth (col 2 lines 10-17), and efficient control systems for fill and empty conditions (col 3 lines 18-64). Such

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teaching would be enough to motivate one of ordinary skill in the art to use the teaching of Voznick in the teaching of Boulter. Re hindsight, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Also, Boulter teaches the purified water as outside the bladder (11) in the figures, especially, figure 24. Reservoirs 10 and 2300 are linked by line 2201, which makes the Boulter system as having a flexible reservoir, because the bladder 11 makes the volume in the reservoir 2300 through reservoir 10 flexible, as claimed. Also, having the purified water inside the bladder or outside the bladder is only a mere reversal of the parts, and is unpatentable, unless appellant can show with evidence that such a reversal is unobvious. A mere reversal of parts (*In re Gazda* 219 F.2d 449, 104 USPQ 400 (CCPA 1955) or rearrangement of parts (*In re Japikse*, 181 F.2d 1019, 86 USPQ 70 (CCPA 1950) and *In re Kuhle*, 526 F.2d 553, 188 USPQ 7 (CCPA 1975) is unpatentable.

4. Rejections of claims 26 and 28-30:

These claims were rejected 103(a) over Boulter in view of Credle. These claims add further limitations of beverage dispenser, etc., and since Boulter does not teach this, Credle was used in combination. The claims recite having the beverage

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dispenser. Boulter does not teach beverage dispenser. However, it would be obvious to one of ordinary skill in the art to attach a postmix beverage dispenser as taught by Credle to the water-source-supply system of Boulter to have a beverage dispenser system to which clean and refrigerated water is supplied as taught by Boulter.

5. Rejections of Claims 15, and 18-19:

In response to the argument, "... there is no teaching in Credle, Voznick or Boulter that shows a treated water source integrated with a beverage dispenser in cooling proximity to the beverage dispenser's cooling source. With out such teaching, there can be no suggestion or motivation to combine...": the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

6. Rejections of claims 6,7,11 and 12:

Appellant does not provide any arguments other than a statement that there is no motivation. The rejection provides a good motivation to combine the references – energy recovery, as taught by the Blades ref.

(11) Related Proceeding(s) Appendix

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No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.


Respectfully submitted,



7/28/06

Krishnan S. Menon, Examiner, AU 1723

Conferees:



Wanda Walker



Duane Smith